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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/775,760	02/09/2004	Erik B. Christensen	MS1-1863US	8719		
22801	7590	12/02/2008	EXAMINER			
LEE & HAYES PLLC 601 W Riverside Avenue Suite 1400 SPOKANE, WA 99201				PANNALA, SATHYANARAYA R		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/775,760	CHRISTENSEN ET AL.	
	Examiner	Art Unit	
	SathyanaRayan Pannala	2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 01 October 2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-15 and 25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-15 and 25 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/1/2008 has been entered.

Response to Amendment

2. Applicant's Amendment filed on 10/1/2008 has been entered with amended claims 1, 11 and newly added claim 25. In this Office Action, claims 1-15 and 25 are pending.

Specification

3. A thorough examination of this application reveals that it includes terminology which is so different from that which is generally accepted in the art to which this invention pertains that a proper search of the prior art cannot be made. For example: The most popular data processing phrase/term “**data structure**” is defined in Specification in an unusual way as “As used herein, the term ‘data structure’ refers to

electronically encoded information that may be exchanged, such as email, data files, electronic images, electronic multimedia content and the like.” Most popularly used

Microsoft Computer Dictionary defined **Data structure** as “A general description of the format of records in a database, including the number of fields, specifications regarding the type of data that can be entered in each field, and the field name used.”

Whereas Merriam-Webster’s Collegiate Dictionary defined data structure as “any of various methods of organizing data items (as records) in a computer.” The term data structure has been defined nearly a century back and it has been extensively in use in the field of data processing. Similarly, Applicant used another term “As used ‘transport’ or ‘transport vehicle’ is a communication substrate between two or more endpoints and includes radio frequency, digital, wireless, wired and optical transmission media within its scope.”

Applicant is required to provide a clarification of these matters or correlation with art-accepted terminology so that a proper comparison with the prior art can be made. Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 11 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant used as "a data structure" and "a data streaming protocol" instead of "the data structure" and "the data streaming protocol."

6. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant is claiming as "when the data structure reaches a second size limit." The specification does not define or specify "a second size limit." Applicant has been claiming as a predetermined size. In this claim, applicant claimed totally different and the cited paragraphs does not explicitly teach the way it is claimed.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. § 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claim 1 is rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. The instant claims

neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps of determining a size of a data structure and sending data based on the size, which are done without storage, and therefore do not qualify as a statutory process.

Claims 2-10 are rejected under 35 U.S.C. 101 as being dependent on an independent claim1 respectively, which were rejected under 35 U.S.C. 101.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1-15 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent 6,665,729) hereinafter Walker, and in view of Wookey et al. (USPA Pub. US 20040001514 A1) hereinafter Wookey.

11. As per independent claim 1, Walker teaches to compensate for limitations that arise when a transaction-based protocol is used together with stream based protocol, the stream-based protocol is modified to take advantages of certain characteristics of transaction-based protocols (col. 2, lines 50-54). Walker teaches the claimed, determining a size of a data structure (Fig. 3, col. 4, lines 50-54). Walker does not explicitly teach bulk data protocol. However, Wookey teaches the claimed, when the size exceeds a predetermined limit, selecting a data streaming protocol (examiner interpreting data stream protocol as bulk data protocol) (page 20, paragraph [0297]). Thus, it would have been obvious to one of ordinary skill in the data processing art at the time of the invention, to have combined the teachings of the cited references because Wookey's teachings would have allowed Walker's method to eliminate the confusing issue of which services to use, why the services are different and to facilitate the user with a single integrated service by the service provider. (page 1, paragraph [0007]). Walker teaches the claimed, When the size does not exceed the predetermined limit, and when a predetermined time interval has elapsed (Wookey stream protocol same as bulk data protocol when the data size exceeds predetermined size otherwise Walker uses buffer protocol) (Fig. 3, col. 4, lines 50-67), selecting a buffered data protocol otherwise (col. 1, lines 49-53).

12. As per dependent claim 2, Walker teaches the claimed, selecting a buffered data protocol further comprising serializing one or more data structures into a data transmission unit terminating with a delimiting code (Fig. 3, col. 3, lines 56-59).

13. As per dependent claim 3, Walker teaches the claimed, selecting a buffered data protocol further comprising including an end of data indicator for denoting when a data transmission vehicle is no longer in use (Fig. 3, col. 4, lines 65-67).

14. As per dependent claim 4, Walker and Wookey combined teaches claim 1. Wookey teaches the claimed, selecting a data streaming protocol further comprising streaming the data structure by: streaming a header, streaming the data structure and streaming an acknowledge code (Fig. 12, page 8, paragraph [0123]).

15. As per dependent claim 5, Walker teaches the claimed, selecting a data streaming protocol further comprising streaming the data structure by buffering a first portion of the data structure and streaming a second portion of the data structure (Fig. 3, col. 3, lines 56-59).

16. As per dependent claim 6, Walker and Wookey combined teaches claim 1. Wookey teaches the claimed, selecting a data transmission vehicle from a pool of available data transmission vehicles (page 3, paragraph [0046]).

17. As per dependent claim 7, Walker and Wookey combined teaches claim 1. Wookey teaches the claimed, selecting a data transmission connection from a pool of available data transmission connections using round robin selection (Fig. 5, page 6, paragraph [0099]).

18. As per dependent claim 8, Walker teaches the claimed, formatting the data structure in accordance with at least one protocol chosen from a group consisting of: simple mail transfer protocol, POP3, hyper text transfer protocol, file transfer protocol and transfer control protocol/Internet protocol (col. 5, line 4).

19. As per dependent claim 9, further comprising using a transport vehicle for data transmission chosen from a group consisting of: HTTP transport, TCP transport, InterProcess Transport, InProcess Transport, SMTP transport and POP3 Transport (col. 5, line 4).

20. As per dependent claim 10, Walker teaches the claimed, selecting a transmission scheme chosen from a group consisting of: HTTP, SOAP.TCP, NET.TCP, MS.SOAP.XPROC, NET.IPC, MS.SOAP.INPROC, NET.INAPPDOMAIN, SOAP.MAIL, NET.MAIL and POP (col. 5, line 4).

21. As per independent claim 11, Walker teaches to compensate for limitations that arise when a transaction-based protocol is used together with stream based protocol,

the stream-based protocol is modified to take advantages of certain characteristics of transaction-based protocols (col. 2, lines 50-54). Walker teaches the claimed, processing data from memory (Fig.3, col. 4, lines 54). Walker teaches the claimed, determining a size of a data structure (Fig. 3, col. 4, lines 50-54). Walker does not explicitly teach bulk data protocol. However, Wookey teaches the claimed, selecting a data streaming protocol when the size exceeds a predetermined limit and means for sending a (examiner interpreting data stream protocol as bulk data protocol) (page 20, paragraph [0297]). Thus, it would have been obvious to one of ordinary skill in the data processing art at the time of the invention, to have combined the teachings of the cited references because Wookey's teachings would have allowed Walker's method to eliminate the confusing issue of which services to use, why the services are different and to facilitate the user with a single integrated service by the service provider. (page 1, paragraph [0007]). Walker teaches the claimed, when the size does not exceed the predetermined limit, selecting a buffered data protocol and when a predetermined time interval has elapsed (Wookey stream protocol same as bulk data protocol when the data size exceeds predetermined size otherwise Walker uses buffer protocol) (Fig. 3, col. 4, lines 50-67 and col. 2, lines 45-46). Walker teaches the claimed, sending data of the data structure consistent with the selected protocol (col. 1, lines 49-53).

22. As per dependent claim 12, Walker teaches the claimed, the determining means further comparing the size to the predetermined limit (Fig. 3, col. 4, lines 50-54).

23. As per dependent claim 13, Walker and Wookey combined teaches claim 1. Wookey teaches the claimed, prefacing the data structure with addressing information means for denoting an end-of-message (Fig. 14, page 11-12, paragraph [0163] & [0176]).

24. As per dependent claim 14, Walker teaches the claimed, for exchanging information expressive of buffer size (col. 1, lines 57-61).

25. As per dependent claim 15, Walker teaches the claimed, buffering a first portion of the data structure and streaming a second portion of the data structure (Fig. 3, col. 3, lines 56-59).

26. As per independent claim 1, Walker teaches to compensate for limitations that arise when a transaction-based protocol is used together with stream based protocol, the stream-based protocol is modified to take advantages of certain characteristics of transaction-based protocols (col. 2, lines 50-54). Walker teaches the claimed, determining a size of a data structure (Fig. 3, col. 4, lines 50-54). Walker does not explicitly teach bulk data protocol. However, Wookey teaches the claimed, when the size exceeds a predetermined limit, selecting a data streaming protocol (examiner interpreting data stream protocol as bulk data protocol) (page 20, paragraph [0297]). Thus, it would have been obvious to one of ordinary skill in the data processing art at the time of the invention, to have combined the teachings of the cited references

because Wookey's teachings would have allowed Walker's method to eliminate the confusing issue of which services to use, why the services are different and to facilitate the user with a single integrated service by the service provider. (page 1, paragraph [0007]). Walker teaches the claimed, When the size does not exceed the predetermined limit, and when a second predetermined size limit and system resources are available (Wookey stream protocol same as bulk data protocol when the data size exceeds predetermined size otherwise Walker uses buffer protocol) (Fig. 3, col. 4, lines 50-67), selecting a buffered data protocol otherwise (col. 1, lines 49-53).

Response to Arguments

27. Applicant's arguments filed on 10/1/2008 have been fully considered but they are not persuasive and details as follows:

- a) Applicant's argument stated as "neither Wookey nor Walker teach or suggest all or the elements of independent claim 1."

In response to Applicant's argument, Examiner disagrees. Because Walker does teach as based on the type of protocol selected the data is transmitted (col. 1, lines 49-53). As Applicant earlier agreed that Wookey teaches sending two types of information and one of them is a **Bulk data type**. It clearly indicates a decision is taken before sending the bulk data. Further, Bulk data protocol must be dealt in order to send bulk data. Therefore, Wookey teaches missing part disclosed by Walker. Wookey determines the data

structure size and whenever it exceeds the predetermined size and sends the data using streaming protocol. Otherwise, Walker uses the buffer protocol to send the data. There is no need of checking twice as Applicant tried to overcome prior art by amending the claims inefficient manner. Applicant's new claim does not even support the specification. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sathyanarayan Pannala whose telephone number is (571) 272-4115. The examiner can normally be reached on 8:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sathyanarayan Pannala/
Primary Examiner, Art Unit 2164

srp
November 24, 2008